

DELAWARE RIVER BASIN COMMISSION

MEETING OF MAY 10, 2006

Minutes

The Commission met at the offices of the Delaware River Basin Commission in West Trenton, New Jersey.

Commissioners present: Kevin C. Donnelly, Chair, Delaware
Harry W. Otto, Delaware
Lt. Col. Robert J. Ruch, Vice Chair, United States
Cathy Curran Myers, Second Vice Chair, Pennsylvania
William A. Gast, Second Vice Chair, Pennsylvania
Mark N. Mauriello, New Jersey
Mark Klotz, New York

DRBC Staff participants: Carol R. Collier, Executive Director
Robert Tudor, Deputy Executive Director
Kenneth J. Warren, DRBC General Counsel, Wolf, Block, Schorr &
Solis-Cohen
Pamela M. Bush, Commission Secretary/Assistant General Counsel
Thomas J. Fikslin, Ph.D., Modeling and Monitoring Branch Head
Richard K. Fromuth, Operations Branch Head
William J. Muszynski, Project Review Branch Head
Kenneth F. Najjar, Ph.D., Planning and Implementation Branch
Head

Chairman Kevin Donnelly convened the business meeting at 1:30 p.m.

Announcement by NJ and PA Regarding Lower Delaware Special Protection Waters (SPW) Designation. Representing New Jersey's new governor, Jon Corzine, and new commissioner of the New Jersey Department of Environmental Protection (NJDEP), Lisa Jackson, for the first time at a meeting of the DRBC, Mr. Mauriello acknowledged that the matter of permanent designation of the Lower Delaware River as a SPW had been pending for some time. He said the issue was discussed at a meeting between Commissioner Jackson and representatives of the Delaware Riverkeeper Network, the organization that petitioned the DRBC to place the Lower Delaware into the SPW program. Commissioner Jackson consulted with Pennsylvania's Secretary of the Environment, Kathleen McGinty, and the two states agree that it is important to move forward on permanent designation of the Lower Delaware. The agencies continue to work at resolving questions concerning program implementation, and in particular, the issues of "grandparenting" approved but as yet unutilized treatment plant capacity and determining compliance points. Mr. Mauriello said Commissioner Jackson is committed to devoting staff resources to resolving the remaining issues. New Jersey and Pennsylvania hope to report progress at the Commission's July meeting. Commissioner Myers added that Pennsylvania and New Jersey will continue to work together

closely as the two states most affected by the designation. She said that new data analyses confirm that an SPW designation for the Lower Delaware is warranted. Ms. Myers asked the DRBC staff to assist the two states in convening meetings for working out the nuts and bolts of implementation, including the location of compliance points, and for determining the extent to which it may be necessary to rewrite regulations of the DRBC to accomplish the purposes of the program. Ms. Myers then turned over her chair to Governor Rendell's Second Alternate, Bill Gast, and left to fulfill obligations in Harrisburg.

Minutes. Mr. Donnelly called for a motion to approve the Minutes of the Commission's meeting of March 1, 2006. Mr. Gast so moved, Lt. Col. Ruch seconded his motion, and the Minutes of the March 1, 2006 Commission Meeting were approved by unanimous vote.

Announcements. Ms. Bush announced the following upcoming meetings:

- *DRBC Water Accountability Subcommittee Meeting.* This subcommittee of the Water Management Advisory Committee will meet on Thursday, June 1st and Thursday, June 29th at 9:30 a.m. in the Goddard Conference Room, DRBC, 25 State Police Drive, West Trenton, New Jersey. The staff contact is David Sayers, (609) 883-9500, ext. 236.
- *DRBC Flood Advisory Committee Meeting.* Wednesday, August 9, 2006 at 10:00 a.m. in the Goddard Conference Room, DRBC, 25 State Police Drive, West Trenton, New Jersey. The staff contact is Rick Fromuth, (609) 883-9500, ext. 232.
- *DRBC Water Management Advisory Committee Meeting.* Thursday, September 14, 2006 at 9:30 a.m. in the Goddard Conference Room, DRBC, 25 State Police Drive, West Trenton, New Jersey. The staff contact is David Sayers, (609) 883-9500, ext. 236.
- *Next Commission Meeting.* Wednesday, July 19, 2006 in the Goddard Conference Room, DRBC, 25 State Police Drive, West Trenton, New Jersey.

Hydrologic Conditions. Mr. Fromuth reported on hydrologic conditions in the Basin.

A continuing dry spell and the approach of the peak water demand season prompted Pennsylvania and New Jersey to declare statewide drought watches. Pennsylvania's drought watch declaration was issued on April 11, 2006 and New Jersey's on May 8th. Residents of both states were urged to conserve water as rainfall deficits persisted and streamflow and ground water levels declined.

The observed precipitation for the Delaware River Basin above Montague, New Jersey for the period January 1 through May 8, 2006 was 11.34 inches, or 2.52 inches below normal. For the same period, rainfall for the Delaware River Basin above Trenton, New Jersey was 12.70 inches or 1.99 inches below normal and in Wilmington, Delaware, precipitation measured 11.18 inches or 3.49 inches below normal.

The average observed streamflow of the Delaware River at Montague, New Jersey in April 2006 was 5,263 cubic feet per second (cfs), or 46.2 percent of the long-term average for the month. The average observed streamflow at Trenton, New Jersey in January was 10,649 cfs, or 53.0 percent of the long-term average for the month.

For the period from May 1 through May 8, 2006, the average observed streamflow of the Delaware River at Montague was 4,454 cfs, or 64.9 percent of the long-term average for the month. The average streamflow at Trenton during the same period was 10,399 cfs, or 76.2 percent of the long-term average for the month.

In the Lower Basin, as of May 9, 2006, Beltzville Reservoir contained 13.10 billion gallons (bg) usable, or 100.8 percent of usable storage. Blue Marsh contained 6.62 bg usable, 101.8 percent of summer pool usable storage, and Merrill Creek contained 15.533 bg usable, or 99.0 percent of usable storage.

In the Upper Basin, as of May 9, 2006, Pepacton Reservoir contained 139.693 bg usable, or 99.6 percent of usable storage. Cannonsville contained 96.479 bg usable, or 100.8 percent of usable storage. Neversink contained 33.369 bg usable, or 95.5 percent of usable storage. Total New York City Delaware Basin reservoir storage was 269.541 bg usable, or 99.5 percent of usable storage.

As of May 8, 2006 the average ground water level in eight reported USGS observation wells in the Pennsylvania portion of the basin was below the long-term average. Water levels expressed as 30-day moving averages at six of these wells were below their normal ranges for this time of the year. Water levels at the remaining two wells were within their normal ranges. Water levels at the Cumberland County, New Jersey coastal plain observation well were within the normal range. Water levels at the New Castle County, Delaware coastal plain observation well were within their normal range as of March 15th. The long-term USGS observation well in Kent County, Delaware was recently discontinued.

During the month of April 2006, the location of the seven-day average of the 250-parts per million (ppm) isochlor, also known as the "salt line," ranged from river mile (RM) 71 to RM 73. The normal location of the salt line during April is RM 61, a location eight miles downstream of the Delaware Memorial Bridge.

As of May 8, 2006, the salt line was located at RM 70, approximately one mile upstream of the Delaware Memorial Bridge. This location is six miles upstream of the normal location for May.

Executive Director's Report. Ms. Collier's remarks are summarized below:

- *State and Federal FY07Budgets.* The Commission was successful this year in obtaining the full fair share of signatory funding owed it by New York State – \$123,000 more than New York has appropriated in recent years. New York's legislature has consistently approved less than the state's fair share for the past seven years. The change was made in part through the efforts of Pam Bush, who worked at communicating to New York State Senate and Assembly members the Commission's value to New York.

Staff continues to work to restore DRBC's federal allocation. The House Appropriations Committee's Energy & Water Subcommittee meets this week, and staff is hopeful that Congressman Hinchey of Pennsylvania will succeed in introducing language granting the Commission a credit in the amount of the payments DRBC makes annually to the United States Treasury for water supply storage at two basin reservoirs.

- *\$1 Million Grant for the Philadelphia District to Advance Basin Priorities.* The Assistant Secretary of the Army for Civil Works held a competition among U.S. Army Corps of Engineers (ACOE) districts nationwide for \$4.5 million to support cooperative watershed planning and implementation projects. A total of five grants were awarded. The Philadelphia District proposal, developed jointly by ACOE and DRBC staff won one of two \$1 million awards, to be distributed to the District over a period of two years. The other region that received \$1 million was the Great Lakes. The scope of work for the grant includes: re-examination of the Corps' "Level B" study, setting forth water supply storage needs in the basin; development of a long-term flow management program that takes into account ecological flow needs of both the upper basin and the estuary; multi-jurisdictional flood mitigation planning; a re-examination of DRBC's approach to water supply storage and water withdrawal charges; and a data management program that would improve inter-agency data sharing capability and public access to data.

Lt. Col. Ruch complimented the staff on an excellent job. He said the Basin Plan, which was signed by the signatory states and multiple federal agencies, provided the groundwork for the proposal, making it possible to establish priorities, inter-agency and political support quickly. Col. Ruch noted that each state had furnished a letter of support to the Assistant Secretary of the Army, as did members of the Delaware Basin Congressional Task Force. All participants and supporters of the Basin Plan played a role in the District's success, he said, by making possible the submittal of a consensus proposal in a short amount of time.

- *PA Act 220 Activities.* The Commission has received funding from the Pennsylvania legislature for the past two years to assist the Pennsylvania Department of Environmental Protection (PADEP) in developing a state water plan. The plan must be finalized this year in order to meet a legislative deadline. In order to assist in completing key tasks, DRBC seeks an appropriation of \$500,000, the same amount that has been allocated to the Susquehanna River Basin Commission (SRBC).
- *Pennsylvania Growing Greener Grant.* The Commission also has applied jointly with the SRBC for Pennsylvania Growing Greener Grant funds for development of a water conservation program.
- *Conservation.* DRBC staff member David Sayers worked with George Kunkel of the Philadelphia Water Department to develop a loss audit tool that can be used by local water authorities to improve their loss accounting, and ultimately reduce water loss. The tool is available on the website of the American Water Works Association and will be presented at a meeting of Pennsylvania's Act 220 Delaware Basin Regional Committee on May 11.
- *Ice Jam Project.* Damage to the Port Jervis ice jam project during recent floods must be repaired if the project is to continue to prevent ice jams and flooding along the main stem at Port Jervis. Municipalities in the area pay into an escrow account reserved for repairs and maintenance of the project. However, the Army Corps of Engineers has informed the Commission and the parties involved that it will pay 100 percent of the cost of rehabilitating the project, allowing municipalities to reserve the escrow funds to meet future expenses.

- *Personnel.*
 - ✧ Danielle Kreeger, the Delaware Estuary Science Coordinator, will be continuing in this role but reporting to the Partnership for the Delaware Estuary rather than to the DRBC.
 - ✧ Bill Muszynski has led DRBC's Project Review Branch and a series of Special Projects for two and a quarter years, on loan to the DRBC from U.S. EPA Region 2. As of April 1, however, Bill is retired from EPA and has joined the DRBC, which is extremely lucky to have him.
- *Outreach.*
 - ✧ DRBC Communications Branch Manager Clarke Rupert is leading DRBC staff members in multiple outreach events this season on weekends and at other times. These include the Lambertville Shad Festival, Delaware's Bay Day, and other river festivals and educational events.
 - ✧ New information about watersheds and watershed associations has been posted on the DRBC website, including various types of assistance and opportunities for watershed organizations.
 - ✧ DRBC's popular shad bookmarks have been re-issued, with a new quotation on the back, contributed by author John McPhee. McPhee informed us that some of the information printed on a previous version of the bookmark was inaccurate, so he provided us with an authentic quotation, which also conveys accurate information.
 - ✧ The Partnership for the Delaware Estuary has published its annual calendar, filled with children's pictures about water resource protection and estuaries.
 - ✧ The Water Resources Association of the Delaware Basin (WRA) has published its spring newsletter, highlighting information about the state of the basin.
- *Testimony before the Pennsylvania House Environmental Resources and Energy Committee.* Ms. Collier testified recently at a hearing before the Pennsylvania House Committee on Environmental Resources and Energy on the status of water resource planning in the Commonwealth, and in particular on progress toward development of the state water plan. A copy of Ms. Collier's testimony was provided in the commissioners' meeting folders.
- *USEPA Collaborative Cleanup Workshop.* Ms. Collier attended an EPA workshop on collaborative cleanups, at which members of EPA's waste and water divisions examined ways to enhance cooperation between the two divisions to protect water quality endpoints in Brownfields cleanups. Ms. Collier was invited to attend in part because of the DRBC's initiative to reduce PCB contamination in the Delaware Estuary. For the past two and a half years, DRBC's TMDL Implementation Advisory Committee (IAC) has been working to develop a plan for addressing PCB contamination in the Estuary. The draft plan, not yet adopted by the IAC, addresses Brownfields sites and air deposition, and supports the continued use of pollutant minimization plans for point sources. The IAC's final meeting will likely be Wednesday, May 17th. Staff is hopeful that the draft report will be approved that day by all the participants and submitted to the Commission as a set of committee recommendations. The value of the IAC's report will be similar to that of the Basin Plan. If approved, the report will demonstrate common support for the cleanup activities it describes and will provide a foundation for obtaining resources to implement PCB reduction programs in the Delaware Estuary.

- *Upcoming Dates of Interest.*
 - ✧ *May 15, 2006* is the deadline for submitting abstracts to the AWRA for its conference in Baltimore, scheduled for November 2006.
 - ✧ *May 24, 2006* is the date of a planned ribbon-cutting ceremony for the new 318 million gallon Newark Reservoir in Newark Delaware. The first new water supply reservoir to be constructed in the state in the last seventy years, this project is an important outcome of Governor Minner's state water supply plan.
 - ✧ *June 6, 2006* is the date of the Pennsylvania Environmental Council (PEC) annual dinner to be held at the Hyatt Regency Philadelphia Hotel at Penn's Landing.
 - ✧ *June 18-25, 2006* is the week of the 2006 Delaware River Sojourn. Details about the Sojourn are posted on DRBC's website.
 - ✧ *October 12, 2006* is the date when DRBC will host the Schuylkill Action Network's Annual Workshop in Pottstown, PA.

General Counsel's Report. Mr. Warren reported on two pending hearing requests. The first, also discussed at the Commission's March meeting, was filed by the Warren County Pequest Municipal Utility Authority. This was an untimely request that was deferred by the Commission in March, with the expectation that Project Review Branch Head Bill Muszynski, in consultation with the Town of Belvidere, would be able to resolve the matter. Mr. Muszynski was successful, although he has not yet received the document confirming this. Mr. Warren recommended that the Commission continue to defer a decision on the applicant's request, with the hope and expectation that the matter will become moot. The second hearing request was filed in a timely fashion by Congoleum Corporation ("Congoleum"). Congoleum appealed its New Jersey Pollutant Discharge Elimination System permit as well as DRBC's docket. Because the substance of the two appeals overlaps, Mr. Warren recommended that the DRBC defer a decision on this hearing request as well, pending resolution of the NJDEP matter. He noted that a question requiring immediate attention concerned the discharge limitations applicable to Congoleum in the interim. In Mr. Warren's view, Congoleum would be bound by the new docket conditions absent some action by the Commission. He recommended that the Commission allow Congoleum to conform either to the limits of its previous docket or to the NJDEP permit limits in effect, whichever were more stringent, pending further action on the hearing request.

In accordance with Mr. Warren's recommendations, Mr. Donnelly asked for a motion deferring both hearing requests and providing that Congoleum would be required to conform to the limits of its previous docket or the NJDEP permit limits in effect, whichever were more stringent, pending further action by the Commission. Mr. Gast so moved, Mr. Mauriello seconded, and the motion was approved unanimously.

Public Hearing: Project Review Applications. Mr. Muszynski explained that the hearing concerned 20 dockets, including two in Delaware, nine in New Jersey and nine in Pennsylvania. The hearing on an additional docket, No. D-93-4-4 (hearing item 10) for the Premcor Refining Group, Inc., was postponed to allow additional time for review.

Pennsylvania requested that the following condition be added to all withdrawal dockets for projects within the Commonwealth: "The docket holder shall register with PADEP all surface and ground water sources described in this docket in accordance with the Pennsylvania Water Resources Planning Act, Pennsylvania Act 220."

Brief descriptions of the dockets follow, in three categories: Two entail renewals with no substantive changes (e.g., a replacement well with no increase or decrease in allocation); thirteen

constitute renewals with substantive changes (e.g., an increase or decrease in an authorized withdrawal or discharge); and five are new projects (i.e., projects not previously reviewed by the Commission).

Renewals with No Substantive Changes (2).

1. Maidencreek Township Authority D-91-58 CP-3. An application for approval of a ground water withdrawal project to supply up to 5.7 million gallons per thirty days (mg/30 days) of water to the applicant's public water supply distribution system from new Well No. 5 in the Allentown Formation, and to retain the existing withdrawal from all wells of 22.7 mg/30 days. Well No. 5 is proposed as a redundant source to provide flexibility and reliability in operation of the applicant's public water supply distribution system. The project is located in the Maiden Creek Watershed in Maidencreek Township, Berks County, Pennsylvania.
2. Old York Country Club D-95-3-2. An application for the renewal of a ground and surface water withdrawal project to continue withdrawal of up to 8 mg/30 days to supply the applicant's golf course irrigation system and potable water supply from existing Wells Nos. 1 and 2 in the Magothy Formation and two man-made storage reservoirs fed by a wet well and stormwater. The project is located in the Blacks Creek Watershed in Chesterfield Township, Burlington County, New Jersey.

Noting that no written or oral comments on hearing items 1 and 2 were offered, and no material changes to the allocations were proposed, Mr. Muszynski recommended that the two dockets be approved. Mr. Donnelly called for a motion to approve hearing items 1 and 2. Lt. Col. Ruch so moved, Mr. Gast seconded his motion, and the two dockets were approved by unanimous vote.

Renewals with Substantive Changes (13).

3. Bridgeport Disposal, LLC D-72-49-2. An application for approval of a ground water and surface water withdrawal project to supply up to 0.05 mg/30 days of water from a surface water intake on Raccoon Creek, up to 17.86 mg/30 days from 21 remediation wells in the Raritan-Magothy Formation and up to 17.91 mg/30 days from both combined sources. The requested allocation represents a decrease from the existing allocation of 1.44 mg/30 days for the surface water withdrawal and an increase from the existing allocation of 4.5 mg/30 days for the ground water withdrawal. The project is located in the Raccoon Creek Watershed in Logan Township, Gloucester County, New Jersey.
4. Borough of Boyertown D-73-199 CP-2. An application to modify the outfall location for the docket holder's existing wastewater treatment plant (WWTP). The outfall was moved from unnamed tributary 01337 (UNT) to Swamp Creek. The docket holder relocated the outfall in order to avert toxics monitoring on the impaired UNT. The construction of the relocated outfall was completed in November 2000. The WWTP discharges approximately 750,000 gpd to Swamp Creek, a tributary of Perkiomen Creek, which is a tributary to the Schuylkill River. The facility is located in Douglass Township, Montgomery County, Pennsylvania.
5. Fleetwood Borough Authority D-87-54 CP-2. An application to expand a 0.5 mgd WWTP to treat an average flow of 0.7 mgd, while continuing to provide secondary treatment. The

WWTP is located off Walnuttown Road in Richmond Township, Berks County, Pennsylvania. The plant currently serves the predominantly residential area of Fleetwood Borough only. However, part of the proposed additional capacity is needed to serve a portion of Richmond Township. The WWTP will continue to discharge to Willow Creek, a tributary of Maiden Creek in the Schuylkill River Watershed.

6. Giorgio Foods, Inc. D-88-43-2. An application to modify the docket holder's existing food processing industrial wastewater treatment plant (IWTP) by the addition of a forced draft cooling tower along with temperature controller/recorders, cooling tower pumps and recirculation pumps. The modifications are being undertaken to meet new effluent temperature requirements. The IWTP discharges approximately 500,000 gpd to Willow Creek, a tributary of Maiden Creek, which is a tributary to the Schuylkill River. The facility is located in Maidencreek Township, Berks County, Pennsylvania.
7. Gloucester County Utilities Authority D-90-74 CP-2. An application for approval of a WWTP rerate project from 24.1 mgd to 27 mgd. The WWTP effluent will be discharged to the Delaware River in Water Quality Zone 4. The project is located in West Deptford Township, Gloucester County, New Jersey. The WWTP will continue to serve Clayton Borough, Deptford Township, Glassboro Borough, Mantua Township, Monroe Township, National Park Borough, Paulsboro Borough, Pitman Borough, Washington Township, Wenonah Borough, West Deptford Township, Westville Borough, Woodbury City and Woodbury Heights Borough, all in Gloucester County.
8. Brodhead Creek Regional Authority D-91-1 CP-2. An application for the renewal of a ground and surface water withdrawal project to add new Well No. 3 in the Buttermilk Falls Formation to the distribution system with an allocation not to exceed 28.94 mg/30 days and to limit the total withdrawal from new Well No. 3 and existing Wells PW-1 and PW-2 in the Marrellus Formation to 114.94 mg/30 days and to limit the existing surface water intakes in the Brodhead Creek and the Stokes Mill Spring to 126 mg/30 days to supply the applicant's public supply distribution system. The project is located in the Brodhead Creek Watershed in Stroud Township, Monroe County, Pennsylvania.
9. Bernville Corp. D-92-27-2. An application for the renewal of a ground water withdrawal project and for an increase in allocation from 4.5 mg/30 days to 8.3 mg/30 days to supply the applicant's golf course from an existing intake in the Tulpehocken Creek. The project is located in the Tulpehocken Creek Watershed in Jefferson Township, North Heidelberg Township, Berks County, Pennsylvania.
10. The Premcor Refining Group, Inc. D-93-4-4. (Postponed)
11. New Castle County Department of Special Services D-93-6 CP-2. An application to upgrade and expand a 1.7 mgd WWTP to treat 2.5 mgd via chemical addition and Sequential Batch Reactor processes. The project is located off Old Corbit Road just east of the Town of Odessa along the tidal Appoquinimink River in DRBC Water Quality Zone 5 and will continue to serve the Middletown-Odessa-Townsend area of southern New Castle County, Delaware. The WWTP will continue to discharge a portion of its effluent to a tributary of the Appoquinimink River and up to 1.08 mgd will continue to be discharged to adjacent spray application fields. The Appoquinimink River is a tributary of the Delaware River and is the subject of a U.S. EPA

and Delaware DNREC Total Maximum Daily Load study. The proposed upgrade of the WWTP is needed to produce a higher quality effluent in order to meet more stringent NPDES permit limits.

12. Logan Township Municipal Utilities Authority D-95-7 CP-2. An application to expand a 2 million gallon per day (mgd) sewage treatment plant (STP) to process 2.75 mgd, while continuing to provide secondary level treatment. The project is located in Logan Township, Gloucester County, New Jersey approximately 200 feet west of High Hills Road and just south of the railroad right-of-way through Maple Swamp. Due to high quality treatment processes, the applicant proposes to meet stringent NPDES permit limits regarding effluent loadings and concentrations. The project effluent will continue to discharge to the Delaware River in Water Quality Zone 4 via an existing outfall, which is shared with Ferro Corporation, formerly owned by Monsanto Chemical Company.
13. Richland Township Water Authority D-96-44 CP-2. An application for approval of a ground water withdrawal project to supply up to 2.25 mg/30 days of water to the applicant's public water supply distribution system from Wells Nos. 2, 3 and 4, recently purchased from Melody Lakes Properties, and to increase the total combined withdrawal from these wells and the existing Richland Township Water Authority wells to 31.55 mg/30 days. While this represents an increase in allocation to the Richland Township Water Authority, it does not represent an increase in withdrawals from the watershed since both the Melody Lakes project allocation and the existing Richland Township Water Authority allocation are located in the Tohickon Creek Watershed. The project is located in the Brunswick Formation in Richland Township, Bucks County, Pennsylvania and is located in the Southeastern Pennsylvania Ground Water Protected Area.
14. Sanofi Pasteur, Inc. D-99-71-2. An application to expand the applicant's existing IWTP from 0.35 mgd to 0.95 mgd and to increase the discharge to Swiftwater Creek from 0.35 mgd to 0.55 mgd. Beginning in 2007, wastewater will be treated via Sanofi Pasteur's (Sanofi's) existing IWTP, rerouted to process 0.45 mgd, and disposed through a combination of landscape irrigation (up to 0.045 mgd), discharge to Swiftwater Creek (0.45 mgd) and wastewater reuse. Beginning in 2008, wastewater will be treated via Sanofi's upgraded IWTP and disposed through a combination of land application (up to 0.245 mgd), discharge to Swiftwater Creek (up to 0.55 mgd), and wastewater reuse. Beginning in 2010, wastewater will be treated via Sanofi's upgraded IWTP and disposed through a combination of land application (up to 0.245 mgd), discharge to Swiftwater Creek (up to 0.55 mgd), use of the proposed Pocono Township Wastewater Treatment Plant (up to 0.35 mgd), and wastewater reuse. The application is for a discharge of 0.55 mgd to Swiftwater Creek, a tributary to the Brodhead Creek. The facility is located in Pocono Township, Monroe County, Pennsylvania.
15. Artesian Water Company, Inc. D-2003-22 CP-2. An application for approval of a ground water withdrawal project to supply up to 4.32 mg/30 days of water to the applicant's public water supply distribution system from replacement Well No. 1R in the Upper Mt. Laurel Formation in the Bayview Wellfield and to retain the existing withdrawal of 150 mg/30 days from the applicant's nine (9) wellfields supplying the Southern New Castle County distribution system. The project is located in the C&D Canal East Watershed in New Castle County, Delaware.
16. Alcoa Extrusions, Inc. D-2005-1-2. An application to increase the average and maximum discharge concentration of total dissolved solids (TDS) from 1,000 milligrams per liter (mg/l)

to 2,000 mg/l and 4,000 milligrams per liter, respectively. The discharge will be made via an existing outfall to the West Branch Schuylkill River. In support of the requested modification, the docket holder has submitted an analysis concluding that the increased solids concentrations will cause no adverse effect on the downstream aquatic community, nor will they threaten potable water supply intakes located over 65 river miles downstream of the confluence of the West Branch Schuylkill River with the main stem Schuylkill River. No expansion of the treatment facility is proposed. The proposed modifications are attributable to installation of a new reverse osmosis treatment system that will reduce water consumption at the facility but will generate a concentrated waste stream during operation. The treatment facility is located in Cressona Borough, Schuylkill County, Pennsylvania.

Mr. Muszynski recommended that the thirteen docket renewals involving substantive changes be approved.

Mr. Donnelly invited questions or comments on these dockets. Mr. Gast asked whether specific language was added to the Brodhead Creek Regional Authority and Sanofi Pasteur, Inc. dockets regarding timing and PADEP permit conditions. Mr. Muszynski confirmed that the Decision section of the draft Sanofi docket had been modified to provide that Commission approval would be contingent upon the docket holder's obtaining all state permits. The applicant made no objection to this language. Conditions also were added to the Brodhead Creek Regional Authority (BCRA) docket to the effect that the docket holder must register its withdrawals in accordance with Act 220 and that DRBC approval of the surface water withdrawal will be contingent upon the docket holder's obtaining a Pennsylvania water allocation permit.

Mr. Donnelly recognized Kenneth R. Myers, legal counsel to the BCRA. Mr. Myers thanked the Commission staff for taking the time to listen to BCRA's concerns prior to the hearing. He said that all of them had been resolved, with the exception of draft docket condition "z". Condition "z" provides in part that "[p]rior to allowing connections from any new service areas or any new developments, the docket holder shall require the requesting entity to demonstrate or shall independently confirm that the Executive Director has approved a Non-Point Source Pollution Control Plan (NPSP) for the affected service area or development in accordance with Section 3.10.3A.2.e." Mr. Myers said that BCRA would readily comply with the condition as to its own activities, but BCRA objects to the notion that a public water authority should be responsible for requiring prospective customers within its service area to comply with regulations of the DRBC. Mr. Myers said BCRA has no expertise in stormwater control other than to the extent that such control involves its own facilities. It lacks jurisdiction to adopt or implement a NPSP. He said that in Pennsylvania the DEP, the EPA, the county and townships each have a role in stormwater control. Townships within Monroe County, where BCRA operates, are preparing stormwater control plans in accordance with state law, but BCRA has no role in this process. Mr. Myers added that DRBC's regulations explicitly exclude from the NPSP requirement public authorities and other entities that do not have the legal authority to implement non-point source controls in their new or expanded service areas.

Mr. Myers said that in accordance with Pennsylvania law, a public utility such as BCRA has a legal obligation to serve customers within its service area. If BCRA were to decline to serve an otherwise qualified customer, the customer could file a claim against the authority in the Court of Common Pleas of Monroe County. Mr. Myers said he that in his view BCRA could not defend the imposition

of a NPSP requirement, because it has no power with respect to non-point source controls except the power to withhold service, a response that Pennsylvania law forbids. Mr. Myers argued that Pennsylvania courts have established that public utilities can place a condition on water service if the condition is not extraneous to the service provided and if the condition involves the health and safety of the public. In BCRA's view, the actions taken by a developer to control stormwater runoff are extraneous to the water service the authority provides. For the reasons stated, Mr. Myers argued that the exception set forth at Section 3.10.3A.2.e.1) of the Commission's regulations could not be interpreted in any way other than to exempt entities like BCRA from the requirement contained in condition "z" of the proposed docket.

Mr. Warren responded that the applicable DRBC regulation is contained in two parts within subsection 3.10.3A.2.e of the Special Protection Waters regulations. The first part, upon which Mr. Myers's was basing his protest, is subsection 3.10.3A.2.e.1) (hereinafter "e.1"), which requires the applicant to submit an NPSP to the Commission for its approval. Mr. Warren explained that this subsection of the regulations contains an exception for public authorities that do not have the legal authority to implement the NPSP. He noted that the docket does not require BCRA to submit or to implement an NPSP, in large measure because of the arguments made by Mr. Myers. Mr. Warren explained, however, that a second subsection – subsection e.2 – applies in full force to the BCRA and other entities exempt from the subsection e.1. Subsection e.2. states that "approval of a new or expanded water withdrawal and/or wastewater discharge project will be subject to the condition that any new connection to the project's system only serve an area regulated by a non-point source pollution control plan which has been approved by the Commission." The regulations contain no exception to this requirement. For insight into how the two subsections fit together, staff turned to the Minutes of the special meeting of February 16, 1994 at which the regulations were adopted. The Minutes state, "The revised proposal indicates that where a project applicant lacks the legal authority, the Commission could approve the project but would not allow new hook-ups to occur until a non-point source control plan approved by the Commission is in effect for that project's service area." This is precisely how the Commission staff has proposed that the rule be applied in the case of BCRA. Staff has recommended to the Commissioners that the docket be approved, but in accordance with condition "z", that no connection be allowed to a new development until an NPSP approved by the Commission is in effect for that development.

Mr. Warren added that one of the main thrusts of the Special Protection Waters regulations is to get non-point source control plans in place, and to accomplish this in a way that does not handicap existing projects. Thus, new projects must be developed in a more modern way: to receive utility hook-ups, they must have a DRBC-approved NPSP in place. Mr. Warren said that DRBC is taking small steps, but these steps are nonetheless important. In his view, the docket as proposed conforms exactly to the regulations and is also good policy.

Mr. Myers responded that in his letter of May 3, 2006 to Ms. Bush, he pointed out why attempting to separate paragraph e.2 from paragraph e.1 of DRBC's non-point source policy produces strange results. He argued that interpreting the two sections as distinct would separate paragraph 3 and all the other paragraphs of the policy from paragraph 1 and would thereby require non-point source controls in many situations that are clearly exempted. Reading from and paraphrasing from page four of his letter, he said, "if subparagraph 2 stands alone, the five exceptions to Non-Point Source Control Policy set forth in subparagraphs 1(a) through (e) are rendered meaningless. Projects exempt from the Policy would be subject to non-point source control requirements in subparagraph 2

and, as well, to subparagraphs 3, 4, 5, 6, 7 and 8, which impose significant requirements on applicants that until now have been applied only to projects that trigger Section 3.8 review.” Mr. Myers said that unlinking the paragraphs would make all projects subject to NPSP conditions, including “even the smallest and least significant projects with an infinitesimal effect on water quality.” He protested that this would not be an intelligent way to read the rules.

Pam Bishop, a senior legal counsel to PADEP, said that she agreed with Ken Warren’s legal interpretation of DRBC’s regulations but wished to offer a practical argument for BCRA compliance with docket condition “z”. Within the Brodhead Creek Watershed there is currently an approved Pennsylvania Stormwater Management Act (“Act 167”) plan. This plan was approved by the Monroe County commissioners in December 2005 and by PADEP in March 2006. As an approved Act 167 plan, the plan triggers a statutory requirement for all municipalities in the watershed to adopt stormwater ordinances consistent with the plan by next fall. Ms. Bishop said that she believes the PADEP-approved Monroe County Act 167 plan was reviewed by DRBC staff and determined to be consistent with the DRBC requirement. (Mr. Muszynski confirmed this.) If municipalities comply, then all new developments within the BCRA service area will be subject to NPSP plans that have been approved by the Commission. They will be required by state law as well as by the DRBC docket to have those non-point source controls in place. Ms. Bishop said that fact should alleviate BCRA’s fears about how to respond when it receives requests for service. Mr. Myers replied that if the state law is enforced, then condition “z” should be removed from the docket, because there will be no need for the water utility to be involved in the matter of NPSPs.

Mr. Gast commented that the crux of the issue seemed to be BCRA’s legal ability to deny service to a customer who might not be in compliance with the Commission’s NPSP requirement. He noted that Mr. Myers suggested that such a customer could potentially take BCRA before the county court to appeal the denial of service. Since the denial would be in accordance with a DRBC permit, however, Mr. Gast asked whether that appeal might properly belong in federal court.

Addressing Mr. Myers’s argument first, Mr. Warren said that in his view state law cannot trump DRBC’s non-point source plan requirement. He said that if Mr. Myers’s argument were taken to its extreme there would be no reason for BCRA to obtain a DRBC docket approval at all because any requirement imposed by the Commission, unless it were completely duplicative of a state requirement, could not be enforced. He said that a Commission docket requirement is binding upon the BCRA, so that if the BCRA were challenged in court by a customer to which BCRA had denied service on the grounds that the customer’s development was not within an area regulated by a Commission-approved NPSP, a full and complete defense would be that BCRA’s docket prohibits it from allowing new connections under such circumstances. In response to Mr. Gast’s question, Mr. Warren said that if BCRA were sued in state court, the Commission conceivably could intervene and remove the case to federal court. BCRA in either case would have the defense that a DRBC docket requirement prohibits the hookup.

Mr. Gast said he assumed condition “z” was a standard condition for DRBC dockets and was not unique to the BCRA docket. Mr. Warren confirmed that BCRA had not been singled out.

Mr. Donnelly suggested that if a public utility such as BCRA were to include in its procedures the requirement that prospective customers comply with an Act 167 plan, non-point source controls equivalent to those proposed by the DRBC could be more conveniently imposed. Mr. Warren conceded that this might be so, but the Commission lacks the power to impose such a condition on

applicants. Ms. Collier added that the approach suggested by Mr. Donnelly would not be available in some cases, because not every watershed in Pennsylvania has an Act 167 plan. Mr. Gast confirmed that even where counties have approved an Act 167 plan, not all municipalities have adopted an ordinance consistent with the plan. Ms. Bishop said that the Pennsylvania and DRBC regulations are mutually re-enforcing, which helps to ensure the agencies' shared objective that NPSPs be developed and implemented for all new developments.

Mr. Myers protested that condition "z" would not cease to operate upon a municipality's adoption of the required stormwater ordinance, and thus, his client would be left forever in the middle of battles that should properly be waged by DRBC and developers. Mr. Warren replied that DRBC's requirement would not function this way. Rather, the DRBC rules allow a utility to connect to any new project that is located in an area regulated by a NPSP approved by the Commission. If a municipality adopts an ordinance consistent with a DRBC-approved plan, then the matter of compliance with condition "z" will no longer be a concern in the municipality, because all developments there will be regulated by the plan. If the Monroe County Act 167 plan is submitted to the DRBC, staff, who already have reviewed the plan and found it sufficient, will recommend that it be approved. In response to a request by Mr. Myers for clarification, Mr. Warren explained that once a municipality adopts a binding non-point source plan which is then approved by the Commission (as Monroe County's plan will be) or which already has been approved by the Commission, then BCRA will be free to hook up all new customers within the territory covered by that plan.

Mr. Gast asked whether BCRA serves more than one municipality. Mr. Myers said its service area includes four townships. Mr. Gast explained that once each of those municipalities has adopted an ordinance consistent with the Monroe County's Act 167 plan, as Pennsylvania law requires each of the municipalities to do, BCRA can hook up customers anywhere within the four municipalities and be confident of compliance with condition "z". If a municipality does not adopt an ordinance, and a developer does not voluntarily comply with a NPSP approved by the Commission, the purpose of DRBC's regulation is to ensure that the authority does not serve the developer's project. The intent is to induce the municipality, or at least the developer, to implement non-point source controls. Mary Ellen Noble of the Delaware Riverkeeper Network pointed out to Mr. Myers that developers might very well urge a municipality to adopt a conforming ordinance, if only to save themselves the trouble of submitting a NPSP to the Commission.

Mr. Donnelly asked for any further comments on the BCRA docket or any of the other dockets before the Commission, including hearing items 3 through 9 and 11 through 16. Ms. Noble said she was delighted to hear Mr. Mauriello and Ms. Myers report at the beginning of the business meeting that New Jersey and Pennsylvania intend to ensure DRBC moves forward to implement the Special Protection Waters (SPW) program in the Lower Delaware. She said she knew that for the Sanofi Pasteur docket (hearing item 14), located in a section of the Delaware in which the SPW program has been implemented since 1994, determining SPW compliance took a great deal of time and effort to work out. However, the effort invested in the docket served to advance the Commission's ability to implement the program, and will ensure that water quality is protected in the Brodhead Creek Watershed, she said. Ms. Noble commended Mr. Muszynski on his painstaking efforts to sort out the complexities of the program in this instance and said she hoped Pennsylvania and New Jersey would get on with applying the program in the Lower Delaware. She said that a great deal is riding on the Lower Delaware designation. She thanked the commissioners for their attention.

Theresa Morley of the Brodhead Watershed Association (BWA) thanked the Commission for its focus on protecting high quality waters. She said protecting water quality is a serious concern to residents of Monroe County, where she described the impacts of development as “astronomical.” She said that surface water quality in the Brodhead is in peril. In addition to recognizing the Commission’s efforts, she thanked Sanofi Pasteur as well, in particular for its intensive search for decentralized wastewater disposal solutions. She added that the BCRA is also working very hard to protect the region’s water resources and said that residents could not ask for better people to be operating these facilities. However, she said that there seemed to be little regulation in Pennsylvania to truly protect these waters. For instance, she said that the status of the Act 167 plan in Monroe County concerns her. It is Ms. Morley’s understanding that the county commissioners stalled the plan for two years in a dispute over the size of riparian buffers, that when PADEP ultimately reviewed the plan, it made revisions that the county commissioners refused to accept, and that the county is now appealing the PADEP revisions to the Pennsylvania Environmental Hearing Board. The plan remains in limbo. Ms. Morley again thanked the Commission for its help in protecting the special qualities of the Brodhead Creek Watershed.

Mr. Warren offered a technical correction at page 13 of the Sanofi docket, where reference is made to irrigation capacity. He noted that the date here should be 2008 and not 2010. He said Mr. Muszynski had confirmed this correction with the applicant and that the final docket would reflect the change.

Mr. Muszynski said the Commission received no written comments on any of the thirteen dockets in this group, and he recommended that the Commission approve them. Mr. Donnelly asked for a motion to that effect. Mr. Gast so moved, with the proviso that the final BCRA and Sanofi Pasteur dockets include the revisions discussed. Lt. Col. Ruch seconded Mr. Gast’s motion, and hearing items 3 through 9 and 11 through 16 were approved by unanimous vote.

New Projects (5).

17. Pierson-Gaskill Golf Properties, Inc. D-2000-49. An application for approval of a ground water withdrawal project to supply up to 4.24 mg/30 days of water to the applicant’s Town & Country Golf Links golf course irrigation system from new Wells Nos. 1 and 2 in the Mt. Laurel/Wenonah Aquifer and up to 8 mg/30 days from one intake in an irrigation pond and to limit the withdrawal from all sources to 8 mg/30 days. The project is located in Pilesgrove Township, Salem County, New Jersey.
18. New Egypt Speedway D-2006-1-1. An application for approval of a ground and surface water withdrawal and importation project to supply less than 3.1 mg/30 days of water to the applicant’s automobile racing track from the Pond Well, Office Well and Pond Intake. The Pond Well and Pond Intake are located in the Atlantic Basin. The Office Well is located in the Mt. Laurel-Wenonah Formation in the Crosswicks Creek Watershed in Plumsted Township, Ocean County, New Jersey.
19. Schering Corporation D-2006-2-1. An application for approval of a ground water withdrawal project to supply up to 4.0 mg/30 days of water to the applicant’s pharmaceutical research facility from existing Wells Nos. 1, 2, 3, 4, 5, 6 and 7 and new Wells Nos. 9, 10, 11 and 12.

The project is located in the Kittatinny Aquifer in the Paulins Kill River Watershed in Lafayette Township, Sussex County, New Jersey.

20. Surfside Products, LLC D-2006-3-1. An application for approval of an existing 50,000 gallon per day (gpd) discharge of treated industrial wastewater generated by clam processing. The IWTP discharges approximately 50,000 gpd to the Maurice River, tributary to Delaware Bay. The facility is located in Commercial Township, Cumberland County, New Jersey.
21. Sussex County Municipal Utilities Authority D-2006-6 CP-1. An application for the approval of an existing 50,000 gallons per day (gpd) discharge from the Hampton Commons wastewater treatment facility. The wastewater treatment facility discharges to Marsh's Farm Creek, a tributary to the Paulins Kill River. The facility is located in Hampton Township, Sussex County, New Jersey.

Mr. Muszynski said the Commission had received no comments on the five remaining dockets and recommended that they all be approved. Hearing no comments or questions, Mr. Donnelly requested a motion for approval of the five dockets. Lt. Col. Ruch so moved, Mr. Mauriello seconded his motion, and hearing items 17 through 21 were approved by unanimous vote.

Public Hearing: Resolution Establishing a Pollutant Minimization Plan Peer Review Advisory Committee. Mr. Tudor related that in the spring of 2005, the commissioners approved a resolution amending the DRBC's Water Quality Regulations to allow the Commission to require dischargers to develop and implement pollutant minimization plans (PMPs) for a toxic pollutant whenever a TMDL for the pollutant has been established by the U.S. EPA or a basin state, or when the Commission has made an assimilative capacity determination for the pollutant. The 2005 resolution included a provision for the formation of a Peer Review Advisory Committee and a request that the TMDL Implementation Advisory Committee (IAC) be consulted on the composition of the proposed new committee and the substance of its charge. It is anticipated that the new committee will, among other things, review PMPs and the annual reports by dischargers that are required by the PMP rule, in order to evaluate the effectiveness of the program. Approximately 42 PMPs are currently under staff review or are being implemented. After a PMP has been implemented for a period of twelve months, the discharger is required to submit an annual progress report.

In March, staff presented for the Commission's consideration a draft resolution establishing the PMP Peer Review Advisory Committee and defining its composition and charge. Although staff solicited the IAC's input during the summer of 2005 and again in early 2006, it received little comment from IAC members to incorporate into the March 2006 draft. Thus, at the request of attorney Marc Gold, who spoke on behalf of a group of municipal and industrial dischargers, the Commission agreed to allow additional time for members of the IAC to furnish comments. In April, Mr. Gold submitted written comments on his clients' behalf, and staff responded with revisions to its draft. Some of these were intended to align the charge more closely with the Commission's original directive. Specifically the revised resolution directs the committee to identify minimization measures that are both effective and practicable. The revisions also ask the committee to try to objectively assess whether PCB reductions are being achieved. As to the recipients of the committee's recommendations, the original resolution explicitly provided that the committee would advise the executive director, the basin states and dischargers. Dischargers as well as regulators are intended to benefit from any guidance that the committee may offer.

The proposed composition of the group remains unchanged. Out of the ten members, six are proposed to be from the discharger sector. In addition, staff is proposing that the committee serve to enhance information exchange among all those involved with the PMP program, either through meetings, workshops, a web page, and/or other methods. Finally, staff added some procedural elements, one of which asks the committee to report back to the Commission after four months as to its anticipated work products and schedule, so that the commissioners and committee members can determine whether the group's direction is consistent with the commissioners' intent. The revised resolution also states explicitly that the committee and its work products are purely advisory and not regulatory in nature.

Mr. Tudor recommended that the Commission approve the resolution in order to allow time for committee members to be selected well in advance of submittal of the first PMP annual reports. This would allow members time to look at some of the minimization measures employed by dischargers and to develop an understanding of the program.

Mr. Gold thanked the Commission for affording him and his clients an opportunity to submit comments on the March draft of the resolution. He said that the revised resolution is perfectly acceptable to him and to his clients.

Hearing no further questions or comments, Mr. Donnelly called for a motion to adopt the revised proposed resolution establishing a Pollutant Minimization Plan Peer Review Advisory Committee. Mr. Gast so moved, Mr. Mauriello seconded his motion and Resolution No. 2006-8 was approved by unanimous vote.

Resolution Establishing a DRBC Finance Advisory Committee to Be Composed of Representatives of Each of the Signatory Parties for the Purpose of Developing Recommendations for Maintaining the Financial Stability of the Commission. Ms. Collier said that staff could not provide all the answers to maintaining DRBC's long-term financial stability, and among the commissioners and their respective state and federal employees are likely to be individuals who can help. The proposed resolution would establish a Finance Advisory Committee composed of representatives of each of the signatory parties. The Vice Chair of the Commission would chair the committee, and each of the other parties would appoint one member and one alternate to act in that member's absence. Each member and alternate would serve until their appointments were terminated by the appointing party. The resolution would take effect immediately.

Mr. Gast asked whether the vice chair of the Commission (or his or her alternate) would automatically be the chair of the new committee or whether each signatory would appoint a different representative (i.e., a non-commissioner) to the committee. Ms. Bush explained that the intent was for each commissioner (the three governors and the North Atlantic Division commander of the U.S. Army Corps of Engineers) to appoint a member to the committee, who might be someone other than an alternate DRBC commissioner. Mr. Gast asked whether the intent was for the committee to consist of financial people. Ms. Collier said the selection of the committee members was at the commissioners' discretion. Noting that Pennsylvania would become vice chair of the Commission in July, Ms. Collier said that if either Mr. Gast or Ms. Myers wished to lead the new committee, he or she would be welcome to do so. Alternatively, Pennsylvania could select another individual.

Mr. Mauriello said that although he had no objection to the creation of the committee, New Jersey faces potentially drastic cutbacks in government resources, and the ability of New Jersey staff to take on additional committee assignments might be limited. Ms. Collier said she understood the problem. She said she did not see this committee meeting all that frequently, and expected that it might even be able to accomplish its business by conference call.

Hearing no further questions or comments, Mr. Donnelly called for a motion to adopt the proposed resolution establishing a DRBC Finance Advisory Committee, to be composed of representatives of each of the signatory parties for the purpose of developing recommendations for maintaining the financial stability of the Commission. Lt. Col. Ruch so moved, Mr. Gast seconded his motion, and Resolution No. 2006-9 was approved by unanimous vote.

Resolution Authorizing the Executive Director to Contract for Fish Tissue Analysis. Dr. Fikslin reported that the Commission first contracted in 1991 for the annual collection and analysis of fish tissue from five locations between Trenton and Delaware Bay. A decade later in 2001, three and later four sample collection sites were added above the head of tide, at Narrowsburg, Phillipsburg, Easton and Lambertville. The purpose of the sampling has been to identify toxic pollutants of concern and to provide a scientific basis for fish consumption advisories. Since its inception, the effort has been funded by DRBC's Section 106 grant.

The Commission issued a request for proposal (RFP) in January 2006 and received six proposals in response. Five of the six firms met the Commission's advertised qualifications and were evaluated on both a technical and a cost basis. DRBC staff negotiated a competitive fee with the top-ranked candidate, Axys Analytical Services, Ltd. ("Axys"), and staff recommends that Axys be engaged to provide the requested analytical services. The contract would be for an initial period of three years, with an option for the Commission to extend the agreement to five years at no increase in the per-sample cost, which is not to exceed \$3,975. The amount per sample may be less, depending upon the parameters requested. Dr. Fikslin emphasized that the per sample cost is a maximum cost for analysis of any parameters identified in the RFP, including such emerging contaminants as flame retardants, polychlorinated biphenyl ethers, Teflon derivatives, perfluorooctanoic acids and sulfonates. Analysis for dioxins and furans also may be requested. The current analytical suite includes PCB congeners, organochlorine pesticides and metals.

Referring to the sum of \$68,000 cited in the draft resolution, Mr. Donnelly asked whether this sum had been budgeted for each of the five potential contract years. Dr. Fikslin said that this sum constituted the budget for this year only.

Hearing no further questions or comments, Mr. Donnelly called for a motion to adopt the proposed resolution authorizing the Executive Director to enter into an agreement with Axys Analytical Services for three years, with an option to extend the agreement by two additional years. Mr. Gast so moved, Lt. Col. Ruch seconded his motion, and Resolution No. 2006-10 was approved by unanimous vote.

Resolution for the Minutes Authorizing the Executive Director to Enter into a Professional Services Contract for Evaluation of the Mechanical and Electrical Systems of the Commission's Office Building in Order to Investigate Opportunities for Improving Efficiency and Reducing Cost. Mr. Tudor reported that staff had issued a request for proposal (RFP) for professional services to assist

the Commission in identifying and evaluating options for improving the efficiency of the heating, ventilation and air conditioning systems in the Commission's 1970s-era office building. The six deliverables identified in the RFP and listed in the draft include: (1) an inventory of the Commission's existing equipment, including an assessment of its condition and performance; (2) a set of options for enhancing the efficiency and performance of system components, including replacement alternatives; (3) options for providing on-site power through renewable energy or conventionally fueled systems; (4) recommendations for an optimal combination of technologies considering the Commission's cost and benefit objectives; (5) an analysis of the financial options available for procurement; and (6) preparation of bid documents for the replacement, repair and routine maintenance of the building's mechanical and electrical systems. Mr. Gore noted that some of states and the federal government now have programs that can provide support or rebates for renewable energy systems. One of the alternatives the consultant will evaluate for DRBC is the installation of a solar array on the roof.

The Commission received three proposals and bids, on the basis of which El Taller Colaborativo, P.C. ("ETC") was ranked first. The Commission proposes to engage the firm to perform the first five of the six tasks listed in the RFP, which will provide a basis for findings and recommendations before construction bids are requested. The consultant's charge includes identifying grant programs that could offset the cost of the contemplated improvements. The proposed resolution would authorize the executive director to engage ETC at a cost of not more than \$39,000 to complete tasks one through five.

Mr. Donnelly asked whether a schedule had been established for ETC's completion of the five tasks. Mr. Tudor said that the evaluation was expected to be completed in 90 days. Staff expects to report to the commissioners with findings and recommendations at the September or December Commission meeting. The cost of the study was included in the Commission's Fiscal Year 2007 budget.

The complete text of the resolution follows:

RESOLUTION FOR THE MINUTES

A Resolution for the Minutes authorizing the Executive Director to enter into a professional services contract for evaluation of the heating, ventilation, and air conditioning systems and other power using equipment (collectively, "mechanical and electrical systems") of the Commission's office building in West Trenton, New Jersey in order to identify and evaluate opportunities for improving efficiency and reducing cost.

WHEREAS, the Commission issued a Request for Proposal (RFP) on October 21, 2005 for professional services to evaluate the efficiency of the existing mechanical and electrical systems at the Commission's office building, which was constructed in 1970, and to evaluate alternatives for optimizing the efficiency of these systems; and

WHEREAS, deliverables identified in the RFP included: (1) an inventory of the existing systems, including an assessment of the condition, efficiency and

performance of the equipment; (2) a set of options for enhancing the efficiency and performance of system components, including replacement alternatives; (3) options for providing on-site power through renewable energy or conventionally fuelled systems; (4) recommendations for an optimal combination of technologies considering the Commission's cost and benefit objectives; (5) a description of the financial options available for procurement and the advantages and disadvantages of each; and (6) in accordance with Commission decisions made on the basis of the first five deliverables, preparation of bid documents for the replacement, repair and routine maintenance of the building's mechanical and electrical systems; and

WHEREAS, the Commission received three proposals by the posted deadline of November 28, 2005; and

WHEREAS, having evaluated and ranked the proposals, the Commission staff recommends that the firm of El Taller Colaborativo, P.C. be engaged to provide the professional services desired; now therefore,

BE IT RESOLVED that the Executive Director is authorized to enter into an agreement with El Taller Colaborativo, P.C. to complete the first five deliverables set forth in the RFP at a cost not to exceed \$39,000. The contractor will be directed to proceed with the sixth deliverable, consisting of bid documents for replacement, repair and routine maintenance of system components, after the Commission has made its findings and recommendations based upon the other five deliverables.

This resolution shall take effect immediately.

Hearing no further comments, Mr. Donnelly requested a motion to approve the proposed Resolution for the Minutes authorizing the Executive Director to enter into a contract for evaluation of the mechanical and electrical systems of the Commission's office building in order to investigate opportunities for improving efficiency and reducing cost. Mr. Mauriello so moved, Lt. Col. Ruch seconded the motion, and the Resolution for the Minutes was approved by unanimous vote.

Resolution for the Minutes Amending the Administrative Manual: Bylaws, Management and Personnel to Provide for Greater Flexibility in Awarding Vacation Credits to New Hires for Senior and Management Positions. Ms. Bush explained that the Commission's *Administrative Manual* provides for employees to receive between 13 and 20 vacation days a year, depending on the length of their tenure with the Commission. The proposed resolution would allow the executive director greater flexibility in awarding vacation days to new hires for senior positions. Job applicants with substantial experience are likely to benefit from more vacation time in their current jobs than the Commission can offer them as new hires. This can make it harder for DRBC to hire qualified people for senior positions. Staff is recommending no change to the maximum allowable number of vacation days. However, the proposed amendment would allow the executive director to negotiate within that limit the number of vacation days accorded a new employee within the top three grade levels in the Commission's grade structure. The complete text of the resolution follows:

RESOLUTION FOR THE MINUTES

A Resolution for the Minutes authorizing the Executive Director to exercise flexibility in awarding vacation credits to new hires for senior and management positions.

WHEREAS, the Commission's *Administrative Manual: Bylaws, Management and Personnel* provides for Commission employees to earn vacation credits in accordance with a graduated scale, ranging from 13 days to 20 days per year, depending upon their years of service with the Commission; and

WHEREAS, the Commission occasionally needs to hire staff for senior and managerial positions, which include classifications E-22, E-24 and E-26 of the grade structure established by Resolution No. 2003-15; and

WHEREAS, candidates who qualify for these positions typically possess high levels of experience and are advanced in their careers sufficiently to earn annual vacation time in excess of that prescribed by the *Administrative Manual* for new hires; and

WHEREAS, in a competitive hiring market, the Commission will improve its ability to hire top candidates for senior level positions by allowing greater flexibility in the award of vacation time to new hires at the senior management level; now therefore,

BE IT RESOLVED by the Delaware River Basin Commission,

1. The *Administrative Manual: Bylaws, Management and Personnel* shall be amended by the addition of the following paragraph immediately below the sub-section entitled "Full Time Employees" and before the sub-section entitled "Part Time Employees" in Section F.6. Vacation:

When hiring individuals for full-time senior and management positions (those classified E-22, E-24 and E-26 in the grade structure established by Resolution No. 2003-15) the Executive Director is authorized to award vacation credits in excess of the number otherwise prescribed for new hires, but not to exceed 20 vacation days per year.

2. This amendment shall be effective as of January 1, 2006.

Mr. Donnelly invited questions. Hearing none, he requested a motion to approve the Resolution for the Minutes amending the *Administrative Manual: Bylaws, Management and Personnel* to provide for greater flexibility in awarding vacation credits to new hires for senior and management positions. Mr. Mauriello so moved, Lt. Col. Ruch seconded the motion, and the commissioners approved the Resolution for the Minutes by unanimous vote.

Resolution Providing for Election of the Commission Chair, Vice Chair and Second Vice Chair for the Year 2006-2007, Commencing July 1, 2006. Ms. Bush explained that by tradition, commissioners are elected annually to the positions of chair, vice chair and second vice chair on a rotating basis. In accordance with the established sequence, the United States representative will be elected chair, the governor of Pennsylvania will be elected vice chair, and the governor of New Jersey will be elected second vice chair for the fiscal year commencing July 1, 2006 and ending June 30, 2007.

Mr. Gast noted that on one occasion in the past the rotation was adjusted in order to spare a new USACE district commander the job of chairing the Commission. Ms. Bush noted that General Grisoli had decided to convene a federal agency coordination summit in July, with the understanding that this timing would coincide with the commencement of his term as Commission chair. Mr. Gast said that he was not suggesting any change but merely noting that the Commission had occasionally departed from the traditional rotation.

Mr. Donnelly invited further questions or comments. Hearing none, he requested a motion to approve the proposed resolution providing for election of the Commission chair, vice chair and second vice chair for the year 2006-2007, commencing July 1, 2006. Mr. Gast so moved, and Mr. Klotz seconded his motion. Resolution No. 2006-11 was approved unanimously.

Add-on: Resolution for the Minutes Providing for Annual Salary Rates of Commission Employees for Fiscal Year 2007. Mr. Donnelly read the complete text of the resolution as follows:

RESOLUTION FOR THE MINUTES

A Resolution for the Minutes, providing for annual salary rates of Commission employees for Fiscal Year 2007.

WHEREAS, the Commission desires to adjust the salary rates of Commission employees commensurate with the budget, recognizing the high level of competence, dedication and professionalism exhibited by the Commission staff; and

WHEREAS, a 2.0% salary increase can be accommodated within the Fiscal Year of 2007 budget authority; now therefore,

BE IT RESOLVED by the Delaware River Basin Commission:

1. All Full Time and Part Time Permanent Employees are to receive a 2.0% salary increase effective July 1, 2006.
2. Accordingly, the General Salary Schedule of Annual Salary Rates by Grade for Fiscal Year 2006 is hereby increased by 2.0% for Fiscal Year 2007.
3. This Resolution shall take effect immediately.

Mr. Donnelly invited further questions or comments. Hearing none, he asked for a motion for the proposed Resolution for the Minutes providing for annual salary rates of Commission employees for

Fiscal Year 2007. Lt. Col. Ruch so moved, Mr. Mauriello seconded his motion and the Resolution for the Minutes was approved by unanimous vote.

Public Dialogue. Chairman Donnelly recognized Mr. Richard Schneider, a concerned citizen of the State of Delaware, noting that this was the third consecutive meeting at which Mr. Schneider had addressed the Commission. Mr. Donnelly said the commissioners appreciated Mr. Schneider's presentations. Noting the time, however, he asked Mr. Schneider to limit his comments to information not previously shared with the Commission. He said that the commissioners had provided copies of all Mr. Schneider's materials to the Delaware Department of Natural Resources and Environmental Control (DNREC), and he thanked Mr. Schneider for taking the time to travel to West Trenton to address the Commission.

Mr. Schneider said that he wished to update the commissioners on the status of a clean-up at the DuPont titanium dioxide plant in Edge Moor, Delaware, which Mr. Schneider describes as the largest source of dioxin in the country.

Mr. Schneider said that DNREC had decided to engage an independent contractor – the Schnabel firm based in West Chester – to study a waste pile consisting of 500,000 tons of toxic waste generated by the Edge Moor facility. A contract was expected to be signed within a few days, and the study was expected to take approximately 15 weeks.

Mr. Schneider spoke next about the cleanup of the plant facility itself, which is being undertaken in accordance with requirements of DNREC and EPA. He said that public hearings had been conducted and Secretary Hughes had given his permission for the cleanup to begin. Twenty-six areas of concern will be tested for toxic contaminants. Then a decision will be made as to how each should be cleaned up, and the selected clean-up plans will be implemented. Mr. Schneider said this three-step process would take a long time, but he and other citizens are pleased that it has finally begun. The plant was constructed in the 1930s and has not previously undergone an official cleanup, according to Mr. Schneider.

Mr. Schneider related that a similar titanium dioxide plant constructed in 1978 in DeLisle, Mississippi has caused major environmental damage. According to an article in *The Journal of Shellfish Research*, he said, the DeLisle plant has contaminated the adjacent bay so severely that the bay oysters cannot be eaten safely. Mr. Schneider said that toxic contamination from the plant has resulted in damage to people's health, triggering a number of lawsuits. The Sierra Club has produced a half-hour video about dioxin contamination by the DeLisle plant, copies of which Mr. Schneider distributed to the commissioners and staff. Mr. Schneider speculated that the Edge Moor plant could prove to be three times as harmful to the environment as the plant in DeLisle because it has been operated so much longer. He said that the problem arises from the process for manufacturing titanium dioxide, which entails mixing chlorine with ore that contains organics, at very high temperatures. Dioxin and PCBs are inadvertently produced.

Mr. Schneider said he believed everyone in the room wished to protect the river, the fish and other wildlife, and people. He said that fish consumption advisories issued by the states bordering the estuary caution against eating fish caught above the C&D Canal because of toxic contamination. There are two ways to reduce toxins in the river, he said: by reducing the toxins known to be present and by preventing further releases. He commended the Commission's efforts to reduce

PCBs in the river but protested that as long as releases of PCBs are stopped in one location but allowed to continue in another, no progress will be made. He asked the Commission to prohibit any further discharge of toxins to the river and requested that it impose mandatory reductions of all toxic discharges by some annual percentage – for example, by one or two or five percent per year. He said that companies will not reduce their toxic discharges voluntarily and must be compelled to do so.

According to Mr. Schneider, the DuPont Chambers Works plant in New Jersey is the nation's largest treatment and disposal facility for chemically-tainted wastewater, processing at the present time approximately 220,000 gallons of industrial waste daily (80 million gallons annually). Mr. Schneider said that DuPont proposes to discharge an additional 4 million gallons of treated VX nerve agent waste. He said DuPont's VX treatment proposal is opposed by every environmental group in New Jersey and Delaware, by the governors and citizens of the two states, by U.S. Representative Rob Andrews (D-NJ), and by the Delaware Riverkeeper Network. In 2004, the Delaware State House of Representatives unanimously adopted a resolution opposing DuPont's proposal to treat and discharge VX hydrolysate. Mr. Schneider said that the only entity supporting the proposal is DuPont, which stands to profit from it financially. Processing VX at Chambers Works is not necessary, he said, because the material can be processed safely in Newport, Indiana, where it is currently stored. From an article by Jeff Montgomery published on March 5, 2006 in the *Wilmington News Journal*, Mr. Schneider read,

Near Newport, a town of 600 in central Indiana, pipe fitter Leonard Acres said, 'the Army should abandon its plan for a DuPont proposal contract and resurrect an earlier disposal plan called Super Critical Water Oxidation or SCWO.' A return to a SCWO process now dismissed as too expensive and time-consuming by the Army would destroy the VX in a single step at Newport while leaving only toxic salts that can be landfilled.

Quoting from the same article, he continued,

Critics of DuPont's plan have long argued that the shipments arriving from Newport would carry far more than the drain cleaner-like substance. DuPont plans to immediately treat shipments arriving from Newport to eliminate ethanalamine, a chemical that creates a skunk-like odor and one of three compounds to reconstitute VX. Even after the breakdown other chemicals will remain, including a common chemical used in oven cleaners called sodium hydroxide and several phosphorus compounds, including some that can be used to reassemble VX.

According to Mr. Schneider, the critical question about any proposed discharge is whether it would be good or bad for the river. In his view, a discharge should be permitted only if people can swallow the effluent without suffering harm and if it can be poured into a fish tank without injuring the fish. In his view, the VX discharge should not be allowed because it is not necessary and would be harmful to the river, to people and to fish.

Mr. Schneider said the Commission's sole purpose and responsibility should be protecting the river, not protecting DuPont's profit. He said the public had asked the Commission to end toxic discharges, and the public, the Commission, politicians and companies should all work together toward this goal. Mr. Schneider thanked the Commission. He then introduced Dr. Glenn Evers, another concerned citizen from Delaware. Mr. Donnelly asked Dr. Evers to limit his comments to information different from that presented by Mr. Schneider.

Dr. Evers said that he worked as a chemical engineer and chemist for DuPont for 22 years and was probably one of the top-rated chemical engineers at the company during that time. He said DuPont is known for tackling problems quickly when they are at an emergency stage. However, this is not what happened when Dr. Evers raised concerns about dioxin. When the U.S. EPA performed a survey of Edge Moor, he said, it found dioxin in a product of the plant called ferric chloride, which is used throughout the region for treating drinking water. Dr. Evers said he was deeply concerned about this finding. Until recently, he said, we really did not understand the level of toxicity of the dioxin and PCBs that are present in ferric chloride.

Dr. Evers praised Mr. Schneider, a sheet metal worker, as a concerned citizen who is not representing any environmental or other group. He described himself as another concerned citizen who is unaffiliated with any environmental group, and who is also a whistleblower. He believes he has a responsibility to explain to the Commission and the public in simple terms that the ferric chloride manufactured at Edge Moor and sold by DuPont to filter drinking water contains PCBs and introduces them into the river and into the region's drinking water supply.

By way of demonstration, Mr. Evers poured water into a clear cup. As he did so, he noted that spring water may contain a small amount of sediment. If clay or sediment is present, the addition of ferric chloride can settle out these impurities. Adding a small amount of dye to the water, Dr. Evers said that 10 parts per million of ferric chloride would resemble the now discolored water. According to Dr. Evers, DuPont claims that the amount of dioxin, PCBs and dioxin-like chemicals left in drinking water by the addition of ferric chloride is so small that it has no effect on people. DuPont also says that the amount of these contaminants introduced by ferric chloride is miniscule compared to the amount already in the Delaware River. In Dr. Evers's view, the issue is not whether dioxin is already present in the water supply, but whether DuPont has the right to *add* it. He said DuPont makes another argument to the effect that not all of the dioxin goes into the drinking water – some of it settles or “partitions” out. According to Dr. Evers, however, the segregated material is used in fertilizer, much of which also makes its way back into the river. He noted that the Blue Plains Wastewater Treatment Plant in Washington, D.C. is the largest U.S. purchaser of ferric chloride from DuPont. Sludge from Blue Plains is used to make a popular fertilizer called ComPro that is used on millions of lawns and on the medians of every highway in D.C. When it rains, the dioxin and PCBs in the ComPro are released to the environment. Dr. Evers protested that when DuPont claims that the amount of these contaminants in drinking water is minute compared to the amounts already in the river, it neglects to mention how the contaminants entered the river. According to Dr. Evers, DuPont Edge Moor, the world's largest producer of dioxin, PCBs and hexachlorobenzene, is partly responsible for putting them there.

Dr. Evers related that until last year DuPont denied that 2, 3, 7, 8-TCDD, the most toxic form of dioxin, was present in DeLisle. DuPont did not want to know about the dioxin, Dr. Evers said, so it did not analyze for it. Rather, a legal firm and 2,000 citizens with cancer living within eight miles of

the plant discovered that 2, 3, 7, 8-TCDD was emitted by the DeLisle facility. The plaintiff in a lawsuit chronicled by the Sierra Club documentary is an oyster fisherman on the St. Louis Bay who contracted multiple melanomas – one of the rarest forms of cancers. Dr. Evers testified in the man's trial that DuPont knew its activities in DeLisle were contaminating the environment with dioxin and PCBs. After hearing two weeks of testimony, a jury awarded the fisherman \$15 million in damages. Dr. Evers said that DuPont's ferric chloride contains a thousand times more dioxin than the discharge from the DeLisle plant.

Dr. Evers related that when he came to work at Edge Moor in 1980 DuPont's practice was to place the sludge from its settling ponds, containing PCBs, dioxin, arsenic, manganese, and other contaminants, onto barges and dump it into the Chesapeake Bay. When the effluent from the plant was analyzed, it was found to contain one part per million of dioxin. This might not sound like much, Dr. Evers said, but one part per million times one thousand tons a year adds up to hundreds of pounds. One part per billion is also incorporated in the ferric chloride product. DuPont tells people that a part per billion is such a tiny amount that it is comparable to one second in 32,000 years, making the probability of exposure seem small. However, the part per billion measure is based on the weight of the molecules rather than on their number, when according to Dr. Evers the number of molecules is all that matters. Dr. Evers said that even EPA's most stringent standard for 2, 3, 7, 8-TCDD would allow approximately 1,000 molecules of that contaminant in the small cup of water he poured earlier. He said he doubted anyone would want to drink this. Offering another example, he said that six molecules of anthrax in a room, regardless of their weight, could be fatal to a person. Dr. Evers said that he was pleased to hear that fish and oyster tissue samples collected in the Delaware Bay would be analyzed soon for dioxin. DuPont has not conducted an independent analysis, he said. He does not expect to be surprised by the results, which he expects to show the presence of dioxin at harmful levels.

Dr. Evers said that Philadelphia's drinking water is contaminated with both dioxin and PCBs, but that dioxins are by far the more toxic. He believes that because dioxin and PCBs are stored in body fat, people are protected for a time from their toxic effects. Short of having blood withdrawn, he said, it is impossible to rid your body of these chemicals. In a heavy person who loses weight, however, dioxins that were stored in fat will be released into the bloodstream. The "moral of the story" he said, is that if you have a high dioxin concentration in your body tissue, don't lose weight.

After dioxin contamination at DeLisle became public, Dr. Evers said, DuPont announced that it had begun to implement a dioxin and PCB-reduction program in 2001 for \$10 million. It said the program will reduce the PCBs and dioxins released from Edge Moor by 90 percent. However, DuPont more recently has said that its program was delayed and remains in a pilot phase. Dr. Evers views DuPont's commitment of \$10 million as an admission that the problem of dioxin and PCB releases is serious, but he remains skeptical that DuPont is working diligently to resolve it. "I haven't seen the ribbon-cutting ceremony for that \$10 million program yet," he said. He asked the commissioners to pressure DuPont to live up to its promise. He added that the public should object to the presence of dioxin in a product they purchase to filter drinking water, as well as to the "partitioning" of dioxin into sludge to be sold in the form of fertilizer. He asked the commissioners to look to DuPont when it is looking for a way to achieve significant reductions in PCBs in shellfish, finfish and throughout the estuary environment. He maintains DuPont is the largest producer of dioxin in the world and should neutralize its toxic waste and place it in a secure landfill.

Dr. Evers said he did not have enough DVDs for everyone present, but he urged people to visit the Sierra Club website and view the documentary “Dioxin, Duplicity and DuPont.” Dr. Evers said that the next time he addressed the Commission he would speak about disclosures DuPont has made to the City of Philadelphia, which uses DuPont’s ferric chloride to treat its drinking water. He said EPA informed the City that hexachlorobenzene is present in its filtered water. Following this disclosure, he said, DuPont attempted to show the City that only a trace amount of dioxin was found – not enough to worry about. Dr. Evers urged the Commission’s counsel to subpoena the deposition of Joyce Wallace in the DeLisle litigation. He believes the deposition shows that DuPont misled the City about the safety of ferric chloride. Dr. Evers thanked the commissioners for their attention and for investigating dioxin and PCBs in the Delaware River.

Hearing no further comments, Mr. Donnelly invited a motion to adjourn. Lt. Col. Ruch so moved, Mr. Gast seconded the motion and all concurred. The Commission’s business meeting was adjourned at 4:15 p.m.

Pamela M. Bush, Esquire, Commission Secretary